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Jack P. Broadbent
EXECUTIVE OFFICER/APCO

July 18, 2007

Tom Cackette
Chief Deputy Executive Officer
California Air Resources Board
1001 "T" Street
P. O. Box 2815
Sacramento, CA 95812

Re: 2007 Carl Moyer and Lower-Emission School Bus Program Audit

Dear Mr. Cackette:

This letter constitutes the response by the Bay Area Air Quality Management District (District) to the draft Carl Moyer Memorial Air Quality Standards Attainment Program and Lower-Emission School Bus Program Audit Report (Report), dated June 2007 prepared by the Air Resources Board (ARB). In addition, this letter constitutes a written plan of action to address the findings in the audit report and amplifies the prior commitments made by the District in its letter to you dated May 2, 2007.

The District appreciates the recognition in the Report of those District practices that ARB deems "exemplary" and recommends as best practices for the Carl Moyer Program. In particular, ARB cited the District's focus on Impacted Communities, its innovative outreach tools, and its use of electronic applications.

As you know, this audit of the District's implementation of the Carl Moyer Program is the first such audit conducted by ARB in the nine years since the Program commenced. Given that period of time, it is not surprising that ARB identified areas needing improvement. The District is making and will make every effort to correct any deficiencies in the past nine years of its operation of the Program, while continuing to move forward with its work to prepare and submit the Final Report for the Year 7 Funding Cycle and to implement the Year 8 and Year 9 Funding Cycles. Accordingly, the District is developing a plan that focuses on addressing the recommendations and findings from this audit and the Bureau of State Audit's recent audit. The District intends to implement a robust and model program for Years 8 and 9 and to issue a complete Year 7 Final Report. Separately, the District's plan will focus on reviewing past practices and correcting issues identified with implementation of the Program for the Years 1 through 6 Funding Cycles.

A. Carl Moyer Program

Finding 1: Deficient Carl Moyer Program Operation

ARB cites three concerns with the District's implementation of the Carl Moyer Program:

Spare the Air

- > Project files having incorrect data or missing information;
- > Project files lacking applications or having unsigned applications
- > Match projects that were ineligible.

ARB requires:

- a) A comprehensive plan to eliminate errors. This plan is due to the ARB for review, consultation and approval by September 30, 2007.
- b) In addition, ARB will perform quarterly on-site progress reviews.

District Response:

As an initial matter, the District reiterates its commitment to take appropriate and reasonable measures to create complete and accurate files for all Carl Moyer Program projects since Year 1. However, the District does not believe that all of the items that ARB has identified are necessary or appropriate at this time for all files. For example, the District does not intend to seek copies of project applications signed by grantees for projects already under contract or completed. The District's executed grant agreements incorporate all necessary terms of the applications. The grantees are thus bound by those terms. Moreover, the District's grant agreements include an "integration clause," which renders all prior expressions of agreement among the parties, such as the terms of the application itself, independently legally unenforceable.

The District disagrees strongly with ARB that the District "misspent" any funds. The specific projects identified by ARB as having had "misspent" funds were projects that met criteria for funding under other programs administered by the District, but did not meet the Carl Moyer Program cost-effectiveness criteria. Although these projects may have been inappropriately put forward as local match projects for the Carl Moyer Program, the expenditures for these projects were proper under the District's other programs.

ARB has also challenged the District's use of emission factors that were other than the "default" factors listed in the Program Guidelines. However, the District selected emissions factors that relied on more specific or accurate information for the specific projects. District staff had confirmed verbally with ARB staff the appropriateness of its practice of applying "default" emission factors in the absence of more accurate data. Historically, ARB and District staff have confirmed issues verbally, and ARB encouraged verbal communications to resolve programmatic issues as they arose. As part of its plan to minimize errors, the District will require that all programmatic communications with ARB staff be reduced to writing. This should help assure that the District operates a Program acceptable to ARB.

District Plan of Action:

The District expects to submit a plan by September 30, 2007 as required by ARB. By letter dated May 2, 2007, the District already submitted a description of the plan and its intended actions. The September 30, 2007 comprehensive plan (Plan) will build on that initial letter (a copy of which is attached to and made a part of the District's response to the ARB audit).

The Plan will include the following minimum components:

- Review all District Moyer Program procedures, processes and controls (including, but not limited to, outreach efforts, evaluation of applications and award of grants, file management, contracting, auditing, verification of project expenses, and timeliness of distributions) for adherence to ARB Moyer Program guidance, and, where appropriate, to best practices for grant program administration.
- Conduct an internal audit of the District's procedures and processes and develop recommendations to improve efficiency and effective Program controls.
- Establish a "Policies and Procedures Manual (Years 8 and 9)," based on the current draft manual, which shall reflect the District's modified and improved operation of the Program.
- Include a checklist system to ensure completeness of all project files.

The District notes that it has already begun a number of steps in the Plan, including an internal operations audit and institution of the Program and project file checklist system.

The District agrees to meet quarterly with ARB staff to review the District's progress in developing and implementing its Plan. The District also agrees to an ARB on-site inspection of Program files, once the District has finalized and begun implementation of the Plan.

Finding 2: Funds Misspent or in Jeopardy

ARB cites two issues:

- ARB determined that five selected projects were ineligible, and that more projects were potentially at risk.
- ARB cited a lack of enforceability due to unsigned applications and due to contracts that do not contain all elements to ensure legally binding anticipated or minimum emission reductions.

ARB requires the following actions:

- a) Review eligibility and cost effectiveness of all projects since inception and provide a plan describing reallocation of funds to fulfill match requirements by September 30, 2007.
- b) Update cost effectiveness spreadsheets by September 30, 2007 and remediate through use of funds in the reallocation that are expended before June 30, 2009.
- c) Develop a strategy to ensure cost-effectiveness is accurate, documented and enforceable.

District Response:

The District does not believe that it is appropriate for ARB to make both the plan for determining how to reallocate match funds, and the deliverable of that plan (identification of the replacement projects/funding) due on the same day – September 30, 2007. Actual identification of replacement projects and funding is not possible until after the plan for how to identify such projects is delivered to ARB in September 2007, for ARB's review, consultation, and approval. Obviously, until that plan is approved by ARB, the District cannot move forward with implementing it. It does not make sense for ARB to require that the plan be fully implemented by the date it is required to be submitted for approval.

Similarly, it is inappropriate for ARB to require that all replacement match funds must all be expended by June 30, 2009. The source(s) of match funds are other funds under the District's fiduciary control, and as such, do not fall within the Moyer Program funding cycles. Dates by which replacement match projects must be completed should await evaluation of what projects may be necessary and specific identification of replacement projects.

District Plan of Action:

- District staff has initiated recalculations of cost effectiveness of all projects and, further, has retained a contractor to provide consulting resources to expedite this work already in progress.
- District staff has initiated the process of identifying substitute projects for reallocation.
- The District will ensure all contracts are enforceable using acceptable criteria.
- Implement the plan once ARB has reviewed and approved the plan.

Finding 3: Complete, but Late Expenditures

ARB cites two issues:

- FY 2002/2003 and FY 2003/2004 were expended after the two year deadline, but before the audit, while FY 2004/2005 is expected to be expended before the deadline.
- Any AB923 funds that meet Carl Moyer Guidelines must be expended within the two year deadline.

ARB requires the following actions:

- a) Develop a plan to ensure that funding is spent within the legally mandated deadline, by September 30, 2007.
- b) Submit quarterly status reports on FY 2005/2006 Carl Moyer Program expenditure beginning September 30, 2007.

District Response:

The District agrees that pursuant to ARB's Carl Moyer Program guidelines, which are premised on Health & Safety Code section 44287(k), the District must expend the Carl Moyer Program funds allocated from the state treasury "within two years of June 30 for the year in which [the] funds were reserved." As part of its Plan, the District will identify mechanisms to assure timely payment of allocated funds to projects. The District appreciates ARB's suggestion to consult other districts' practices to assure such timely payment. The District notes that it has expended all of the Year 7 Program funds by the June 30, 2007 deadline.

The District notes, however, that the two-year deadline to expend funds does not apply to funds under the District's fiduciary control that derive from the AB 923 (or other) motor vehicle registration surcharges. Health and Safety Code section 44287(k) refers only to those funds "reserved for a district pursuant to" section 44287, which only concerns ARB's authority over the Covered Vehicle Account within the Carl Moyer Fund in the state treasury. The Covered Vehicle Account does not include the DMV registration surcharges. The District is not aware of any statutory provision that sets timelines for expenditure of DMV surcharge funds.

District Plan of Action:

- ARB notes that this finding is mitigated because the funds were expended before the start of the audit. In addition, ARB noted that FY 2004/2005 funds were expended before the deadline. The District will review the timeliness of distributions, and will develop processes to ensure that all Moyer Program funds allocated from the State treasury will be disbursed within the time period as specified by the applicable Moyer Program Guidelines.

Finding 4: Inaccurate Reporting to the ARB

ARB cites:

- Inaccuracies in reporting including incorrect emission factors, project life and information conflicting with the contracts.

ARB requires:

- a) Review of all cost-effectiveness calculations and, where necessary, updated reports submitted by September 30, 2007.
- b) Methods to minimize future errors consistent with the methods to be developed as related to Finding 1.

District Response:

As previously noted, the District believes that it is inappropriate to make both the plan and the plan's deliverables due on the same day. The District is in the process of correcting all inaccuracies, and is simultaneously developing the plan that will see that process to completion. The plan will be in place by September 30, 2007, and will include a description of the projected completion date for the deliverables.

District Plan of Action:

- The action plan for Finding 2 indicates that staff has initiated recalculations of cost effectiveness of all projects and, further, has initiated a contract and is in the process of obtaining authorization from its Governing Board for additional funding to provide consulting resources to expedite this work already in progress.
- As indicated by ARB, the plan to minimize future errors will be part of the plan to be submitted to satisfy the requirements of Finding 1.

B. School Bus Program

Finding 1: Missing CHP Safety Certificate

ARB cites a safety certificate missing from a project file. A different inspection form confirmed the safety certification.

ARB requires:

- a) School districts must be required to submit copies of California Highway Patrol (CHP) Form 292 for every bus replaced.

District Plan of Action:

The District will institute a project file checklist system for the School Bus program similar to that used in the Carl Moyer Program. This checklist system will ensure that the District obtains all necessary documentation in a timely manner, including requiring that applicants submit CHP Form 292 with their applications.

Finding 2: Missing Purchase Order

ARB cites a purchase order for four new buses missing from a project file. A copy of the purchase order was obtained from the school district.

ARB requires:

- a) All project documentation required by the Guidelines or by District procedures must be maintained in the project file.

Tom Cackett
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District Plan of Action:

As stated above, the District will institute a project file checklist system. Again, the District anticipates that the system will ensure that all project documentation required by the Guidelines or by District procedures will be retained in the project or program files.

Finding 3: Lack of Required Performance Penalty Statement

ARB cites the funding award letter's lack of requirement for delivery deadlines and performance penalty statements, though all school buses were delivered before the deadline. This issue was remedied prior to the audit for FY 2005/2006.

ARB requires:

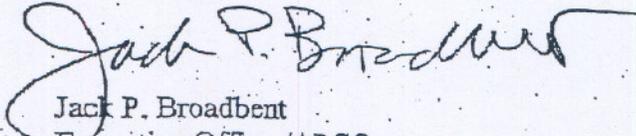
- a) All funding contracts for future years must include performance penalty language and specify deadlines.

District Plan of Action:

District funding contracts currently meet this requirement. The District will review its standard contract again to assure that this requirement is conveyed clearly to grantees.

In conclusion, the District appreciates this opportunity to provide a response to the ARB's draft Report on its audit of the Moyer Program. As set forth in this letter and its May 2 letter to ARB, the District is committed to a comprehensive examination of all aspects of its Moyer Program and to implement changes to improve that program. The District looks forward to receiving ARB's assistance in this endeavor. The District's Moyer Program has been, and remains, an integral component of the District's efforts to continually improve air quality for the benefit of the residents of the Bay Area and beyond. Please let me know if you have any questions regarding this letter, or if I can provide additional assistance.

Sincerely,



Jack P. Broadbent
Executive Officer/APCO

Enclosure



BAY AREA
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May 2, 2007

Tom Cackette
Chief Deputy Executive Officer
California Air Resources Board
1001 "T" Street
P. O. Box 2815
Sacramento, CA 95812

Dear Mr. Cackette:

As you know, the California Air Resources Board (CARB) staff is in the process of conducting its first-ever audit of the Bay Area Air Quality Management District's (District) implementation of the Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer Program). As you also know, during the course of the audit, CARB staff shared with District staff some preliminary issues regarding the District's implementation of the Moyer Program. District staff appreciates this opportunity to outline a number of steps the District staff intends to take to address the issues identified by CARB staff. In taking these steps, District staff will continue to consult and cooperate with CARB staff to ensure that acceptable improvements are implemented in the District's Moyer Program.

Due to the nature of the issues identified by CARB staff, District staff believes that the best approach is to undertake a comprehensive review of the District's Moyer Program. This review will encompass every aspect of the programmatic, administrative, and financial aspects of the District's implementation of the Moyer Program. District staff has engaged and will engage consultants to assist with this review. This broad review will include:

- (1) A review of all District Moyer Program projects currently under contract or committed for funding to confirm eligibility in accordance with CARB Moyer Program guidance;
- (2) A review of all District Moyer Program "match" projects and funding to determine eligibility; and
- (3) A review of all District Moyer Program procedures, processes and controls (including, but not limited to, outreach efforts, evaluation of applications and award of grants, file management, contracting, auditing, verification of project expenses, and timeliness of distributions) for adherence to CARB Moyer Program guidance, and, where appropriate, to best practices for grant program administration.

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District staff expects that the comprehensive reviews in each of these areas will result in recommendations for improvements in the District's Moyer Program. To the extent that the reviews of projects under contract or committed for funding and of match projects and funding identify projects and funding that do not meet Moyer Program requirements, District staff will work with CARB staff to expeditiously identify replacement projects and/or funding to meet the District's obligations under the Moyer Program. District staff expects that these broad reviews of the District's Moyer Program and implementation of anticipated recommendations for improvements will address all of the issues identified by CARB staff.

The District has already retained consultants to assist with the comprehensive review of the District's Moyer Program outlined above. Cindy Sullivan has agreed to assist with a review of Moyer Program projects currently under contract or committed for funding. If necessary, the District will retain additional consultants to assist with this review. In addition, the District has retained Gilbert and Associates to assist with a comprehensive review of the District's Moyer Program processes, procedures and controls. Gilbert and Associates previously assisted the District with a similarly comprehensive review of the District's financial processes, procedures and controls. Gilbert and Associates will review the District's compliance with CARB Moyer Program guidance, as well as provide recommendations for best practices for grant program administration. District staff anticipates seeking authorization from the District's Board of Directors to retain additional consultants to assist with implementing anticipated recommendations for improvements to the District's Moyer Program through computer hardware and software systems, as appropriate.

In addition to undertaking the comprehensive review of the District's Moyer Program and implementation of anticipated recommended improvements outlined above, District staff will take the following actions. First, the District will formally allocate interest earned to date to the Carl Moyer Program accounts maintained by the District. Second, the District will formally document its Board of Directors' approval of the receipt of all Moyer Program funds. Third, the District will develop and present to the District's Board of Directors a request for additional staff to assist in administering the District's Moyer Program. Fourth, based on the recommendations of its consultants, the District will develop and provide training in Moyer Program guidance and best practices for grants program administration for all existing and new staff involved with the District's Moyer Program.

District staff believes that the steps outlined above will significantly strengthen the District's Moyer Program. District staff hopes that CARB staff agrees and will consider these efforts and commitments as it finalizes its review of the District's Moyer Program.

Please let me know if you have any questions regarding this letter, or if I can provide additional assistance.

Sincerely,

/s/ Jack P. Broadbent
Jack P. Broadbent
Executive Officer/APCO